Supreme Court, U.S.
FILED
JUN 22 1993
OFFICE OF THE CLERK

92-2050

NUMBER _____

UNITED STATES SUPREME COURT

OCTOBER, 1993 TERM

SUZANNE CLARK,

PETITIONER

vs.

GEORGE H. CLARK, EXECUTOR;
THE DISTRICT COURT FOR THE
STATE OF IOWA, STORY COUNTY;
THE SUPREME COURT OF IOWA,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PAUL D. LUNDE, ATTORNEY
COUNSEL OF RECORD FOR
SUZANNE CLARK
P. O. BOX 565--700 S. DAKOTA AV.
AMES, IOWA 50010
(515) 292-8233 or 249-8480

BEST AVAILABLE COPY

37pp

QUESTION PRESENTED FOR REVIEW

DID THE U. S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT VIOLATE SUZANNE CLARK'S DUE PROCESS RIGHTS BY REFUSING TO FOLLOW APPLICABLE UNITED STATES SUPREME COURT COURT PRECEDENT AND BY PURPORTING TO FOLLOW PRECEDENTS THAT HAD BEEN SUBSTANTIALLY OVERRULED BY LATER SUPREME COURT DECISIONS THAT THE COURT OF APPEALS IGNORED?

LIST OF PARTIES TO THE PROCEEDING

Suzanne Clark, Petitioner.

George H. Clark, Executor, Respondent.
(He is Executor of the Ferne R. Clark Estate).

The District Court of the State of Iowa in and for Story County, Respondent.

The Supreme Court of the State of Iowa, Respondent.

TABLE OF CONTENTS

Question presented for review . . iii

List of parties to the proceeding iv

Table of authorities vii

References to reports of the opinions delivered in the case by other courts 1

Grounds on which the jurisdiction of this court is invoked . . . 2

Constitutional provision involved 3

Statement of the case 4

Argument 10

Appendix A-1

Decision by the United States Court of Appeals for the Eighth Circuit, filed January 28, 1993 A-2

TABLE OF CONTENTS, CONTINUED

Order of the U. S. Court of Appeals
for the Eighth Circuit denying
suggestion for rehearing en
banc and denying petition
for rehearing, March 25, 1993 . A-9

TABLE OF AUTHORITIES

Cases:

Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980) 18

Astoria Federal Savings and Loan Assn. v. Solimino, ____U.S.____, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991) 16, 17

Hafer v. Melo, 502 U.S.____, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991) 12, 13, 16

Kremer v. Chemical Constr. Corp., 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982) . 16, 17

Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948) 15

TABLE OF AUTHORITIES, CONTINUED

Smith v. Digmon, 434 U.S. 332, 98 S.Ct. 597, 54 L.Ed.2d 582 (1978) 18, 19

Supreme Court of Virginia v. Consumers Union of United States, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980) 15

Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S. Ct. 2304, 105 L.Ed.2d 45 (1989) . 12, 13, 14, 15, 16, 20

Other Authorities:

United States Constitution, Fifth Amendment . . iii, 3, 8, 10, 16

U.S. Constitution, Eleventh Amendment 14

U.S. Constitution, Fourteenth Amendment 5, 6, 9, 12

TABLE OF AUTHORITIES, CONTINUED

28 U.S. Code Sec. 1254(1) . . . 2

28 U.S. Code Sec. 1331 . . . . 8, 9

28 U.S. Code Sec. 1343 (a) . . . 9

42 U.S. Code Sec. 1983 6, 13, 14, 15

Federal Rules of Civil Procedure:

Rule 56 7

Supreme Court Rules:

Rule 10.1 (a) and (c) . . . 10, 11

Rule 14.1(i) 8

Rule 14.1(j) 11

REFERENCES TO REPORTS OF THE OPINIONS DELIVERED IN THE CASE BY OTHER COURTS:

The decision of the United States Court of Appeals for the Eighth Circuit which is the subject of this petition for certiorari is reported at 984 F.2d 272.

The decision of the United States District Court for the Southern District of Iowa which was under appeal in the foregoing decision is unpublished.

* * *

The decision of the United States Supreme Court denying certiorari in the **State** Court proceedings is published at _____U.S._____, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991).

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Date of the judgment or decree sought to be reviewed, and the time of its entry: Opinion filed Jan. 28, 1993.

The date of any order respecting a rehearing: Order denying suggestion for rehearing en banc, and denying petition for rehearing, filed Mar. 25, 1993.

The date and terms of any order granting an extension of time within which to petition for writ of certiorari: None.

The statutory provision believed to confer on this Court jurisdication to review the judgment or decree in question by writ of certiorari: Title 28, U. S. Code, Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of** life, liberty, or **property, without due process of law**; nor shall private property be taken for public use without just compensation. (Emphasis supplied.)

STATEMENT OF THE CASE

During the 14-year period from 1974 to 1988, Suzanne Clark, daughter of Ferne R. Clark, the decedent, lived with and cared for her mother in her mother's home. Two months prior to her death, Ferne executed a deed conveying a life tenancy in her residence to Suzanne. The deed was promptly recorded.

Following Ferne's death, litigation over her estate commenced in the Defendant Iowa District Court in and for Story County. Some aspects of that litigation were appealed to the Defendant Supreme Court of Iowa.

The Defendant George Clark, as Executor, eventually managed to sell Ferne's residence, and Suzanne sought her life tenant's share of the pro-

ceeds, which Defendant Executor refused to pay over to Suzanne. Instead, Defendant Executor obtained a State Court judgment against Suzanne for the rental value of the life estate property, which Suzanne had continued to occupy during the pendency of the first appeal.

Throughout the litigation, the Defendant Iowa Courts totally ignored more than forty attempts by Suzanne to get them to pay attention to her rights under the Fourteenth Amendment, U. S. Constitution. She also asked the Defendant Iowa Courts to take judicial notice of the State land records, showing, inter alia, her legal life tenancy. The Defendant Iowa Courts also ignored the land records.

At the conclusion of the State Court proceedings in 1991, Suzanne petitioned for certiorari in this Court; certiorari was denied. Having exhausted all avenues in the State Courts, Suzanne then turned to the U. S. District Court for the Southern District of Iowa, filing this action pursuant to the Fourteenth Amendment, U. S. Constitution, and to the remedial Federal statute, 42 U.S. Code Section 1983.

In U. S. District Court, Suzanne presented documentary evidence, including the Affidavit of an experienced title examiner, as proof that she was the vested legal owner of a life estate in the Ferne Clark residence, and was entitled to the life tenant's share of the proceeds of the sale of

the residence, still in the Defendant Executor's hands. Suzanne moved for partial Summary Judgment, pursuant to Rule 56, Federal Rules of Civil Procedure, seeking only prospective relief (declaratory and injunctive); this was denied.

Instead, the U. S. District Court granted a motion to dismiss filed on behalf of the Defendant Iowa Courts, and a motion for Summary Judgment filed by the Defendant Executor.

Suzanne Clark appealed the U. S. District Court's decision to the U. S. Court of Appeals for the Eighth Circuit, which affirmed the U. S. District Court, citing as precedent decisions of the U. S. Supreme Court which had already been superseded by later decisions which were brought to the

Court's attention. The later decisions had been brought to the attention of both the U. S. District Court and of the U. S. Court of Appeals for the Eighth Circuit, and in both cases these Courts had ignored the later decisions.

Suzanne Clark contends that her Fifth Amendment due process rights were infringed by the U. S. Court of Appeals decision in which obsolete precedent was relied on as the basis for decision. Suzanne Clark also complains that the Court of Appeals refused to follow other applicable U. S. Supreme Court precedent.

In compliance with Supreme Court Rule 14.1(i), the basis for federal jurisdication in the court of first instance includes: 28 U.S.

Code Sec. 1331; 28 U.S. Code Sec. 1343(a), subsections (3) and (4); the Civil Rights Act of 1871, as amended, 42 U.S. Code Sec. 1983; and the Fourteenth Amendment, U.S. Constitution.

ARGUMENT

THE U. S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT VIOLATED SUZANNE CLARK'S FIFTH AMENDMENT DUE PROCESS RIGHTS BY REFUSING TO FOLLOW APPLICABLE UNITED STATES SUPREME COURT PRECEDENT AND BY PURPORTING TO FOLLOW PRECEDENTS THAT HAD BEEN SUBSTANTIALLY OVERRULED BY LATER SUPREME COURT DECISIONS THAT THE COURT OF APPEALS IGNORED.

Supreme Court Rule 10.1(a) and (c) "indicate the character of reasons that will be considered" in granting review on writ of certiorari in this Court:

> (a) When a United States court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court,

> as to call for an exercise of this Court's power of supervision. ***
>
> (c) When . . . a United States court of appeals . . . has decided a federal question in a way that conflicts with applicable decisions of this Court.

The considerations set forth in the above quotations from Supreme Court Rule 10 are fundamentally due process considerations. In compliance with Supreme Court Rule 14.1(j), Suzanne Clark will now set forth a "direct and concise argument amplifying the reasons relied on for the allowance of the writ."

The design of the Complaint filed by Suzanne Clark in the U.S. District Court for the Southern District of Iowa

was the direct result of this Court's decision in Hafer v. Melo, 502 U.S._____, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991), in which this Court substantially departed from its earlier decision in Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). The essence of Suzanne Clark's petition here is that in deciding her case, the U.S. Court of Appeals for the Eighth Circuit revived and followed the Will precedent and ignored this Court's decision in Hafer altogether. This result was totally unforeseen and Suzanne Clark feels that she has been betrayed by the very legal system upon which she had relied for vindication of her Fourteenth Amendment property rights.

It should be obvious that where, as here, the Court of Appeals bases its de-

cision on the Will case, substantially rejected in the Hafer case, and in fact ignores the Hafer decision, petitioner Suzanne Clark is going to lose her case which was founded on the Hafer decision and upon the reasonable belief that the decision in Will was no longer the law. Suzanne Clark points to the initial paragraph of Justice O'Connor's opinion for a unanimous (8-0) Court in Hafer:

> In Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989), we held that state officials "acting in their official capacties" are outside the class of "persons" subject to liability under 42 U.S.C. Sec. 1983. . . . Petitioner takes this language to mean that Sec. 1983 does not authorize suits against state

> officers for damages arising from official acts. We reject this reading of Will and hold that state officials sued in their individual capacities are "persons" for purposes of Sec. 1983.

In part II.B. of her opinion for the Court, Justice O'Connor discussed the application of the Eleventh Amendment as a possible shield for state officials charged with violating Federal rights under the color of State law. Again, the dicta of the Will case was rejected. Yet here it is again, in the opinion of the Court of Appeals for the Eighth Circuit in the instant case:

> In the first place, it is not proper to make a court a defendant. Courts are not persons

> within the meaning of 42 U.S.C. Sec. 1983, and, if they were, the action would be barred by the Eleventh Amendment, anyway. See Will v. Michigan Department of State Police, 491 U.S. 58 (1989) . . .

The fact is, however, that courts have been named as defendants in many civil rights suits. See, e.g., Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); Supreme Court of Virginia v. Consumers Union of United States, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980). In seeking only **prospective** relief from the Defendant State Courts here, Suzanne Clark sought only to apply existing precedent to her particular case; she did not make any attempt to break new legal ground. She

did, however, reasonably expect that the lower Federal Courts would follow this Court's current precedents and would not take positions that this Court had specifically rejected. Thus, the fact that the Court of Appeals for the Eighth Circuit would purport to follow Will and would totally ignore Hafer could not have been reasonably anticipated. Suzanne Clark urges that this violated her Fifth Amendment, U. S. Constitution right to due process.

In another instance, the Court of Appeals for the Eighth Circuit followed a precedent from which this Court substantially departed in a later case. Compare Kremer v. Chemical Constr. Corp., 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed. 262 (1982), with the later decision in Astoria Federal Savings and Loan Asso-

ciation v. Solimino, _____U.S.____, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991). Using the obsolete precedent, the Court of Appeals again rejected Suzanne Clark's position:

> Plaintiff may not relitigate the issues that have thus been determined against her, see Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982), if she had a full and fair opportunity to litigate those issues in the state courts . . .

But, as Suzanne Clark pointed out in her Brief to the Court of Appeals,

> . . . the dictum from Kremer has no application here, simply because Plaintiff is not complaining about the procedures used by the Iowa Courts.

[Appellant's Brief, page 35.]

Instead, as Suzanne Clark put it in her Brief to the Court of Appeals,

> What is involved here is the proper application of the principles discussed by the U. S. Supreme Court (opinion by Justice Stewart) in the case of Allen v. McCurry [449 U.S. 90, 96; 101 S.Ct. 411, 416, (1980).
>
> [Appellant's Brief, page 35.]

The heart of Suzanne Clark's position on the merits was based on this Court's decision in Allen v. McCurry, supra, cited on **nine** different pages of her Brief to the Court of Appeals, and **never mentioned** in the Court of Appeals decision. Another important decision by this Court upon which Suzanne Clark relied was Smith v. Digmon, 434 U.S.

332, 98 S.Ct. 597, 54 L.Ed.2d 582 (1978). The Court of Appeals opinion went on at some length, taking a position directly **opposite** to the position taken by this Court in Smith v. Digmon, 434 U.S. 332, 98 S.Ct. 597, 54 L.Ed.2d 582 (1978), which the Court of Appeals ignored.

It is useless for a litigant to study, and cite, this Court's decisions as precedent unless this Court insists that its precedents be followed in the lower Federal Courts. Indeed, it is worse than useless, since the access to this Court via certiorari for corrective action is so limited. It is actually dangerous for litigants such as Suzanne Clark to rely on U. S. Supreme Court precedent which will simply be ignored in the lower Federal Courts. Suzanne Clark urges this Court to grant

certiorari, reverse, and remand the instant case to the Court of Appeals for the Eighth Circuit, perhaps saying something about the need to follow this Court's precedents, and to avoid following precedents such as Will that have been substantially overruled.

SIGNATURE OF COUNSEL OF RECORD

Signed by: Paul D. Lunde

Paul D. Lunde, Attorney

P. O. Box 565, Ames, Iowa 50010

Phone (515) 292-8233 or 249-8440

A member of the Bar of this Court.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 92-2327SI

Suzanne Clark, Appellant, v. George H. Clark, Executor of the Estate of Ferne R. Clark, Deceased; the District Court for the State of Iowa in and for Story County; and the Supreme Court of the State of Iowa, Appellees.	* * *

and HAMILTON,* District Judge.

RICHARD S. ARNOLD, Chief Judge.

This is a suit for injunction under 42 U.S.C. Sec. 1983 and the Fourteenth Amendment. The plaintiff in the present case, Suzanne Clark, has previously litigated in the Iowa state courts a question of title to real property formerly owned by her deceased mother, Ferne R. Clark. The other party in the state-court litigation, George H. Clark, is one of the defendants in this case and is Suzanne's brother. The other two defendants in this case are the state courts that decided the dispute between Suzanne and George. Suzanne brings this case,

---

*The Hon. Jean C. Hamilton, United States District Judge for the Eastern District of Missouri, sitting by designation.

according to her own characterization, as "a collateral attack on judgments of two Defendant Iowa State Courts . . ." Brief for Appellant ii.

The District Court[1] dismissed the complaint, and we affirm. Only a brief explanation is necessary.

In the first place, it is not proper to make a court a defendant. Courts are not persons within the meaning of 42 U.S.C. Sec. 1983, and if they were, the action would be barred by the Eleventh Amendment, anyway. See Will v. Michigan Department of State Police, 491 U.S. 58 (1989); Harris v. Missouri Court of Appeals, Western District, 787 F.2d 427, 429 (8th Cir.), cert. denied, 479 U.S.

---

[1]The Hon. Ronald E. Longstaff, United States District Judge for the Southern District of Iowa.

851 (1986). Plaintiff points out that she could avoid this problem by naming as individual defendants the judges of the courts in question. And in fact she attempted to amend her complaint in this fashion in the District Court. But even if this were done, her case would still face an insuperable obstacle: the bar of res judicata, arising out of the adverse judgments she suffered in the former state-court litigation.

The state courts squarely rejected the plaintiff's contention that she had a life estate in the real property in question. See In re Estate of Clark, 476 N.W.2d 367 (Iowa) (table), cert. denied, 112 S.Ct. 640 (1991). All of the contentions that the plaintiff seeks to make in the present, federal action were made in the state courts.

When those courts ruled in favor of George Clark, they necessarily rejected plaintiff's contentions, including her reliance on the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Plaintiff may not relitigate the issues that have thus been determined against her, see Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982), if she had a full and fair opportunity to litigate those issues in the state courts. Plaintiff argues to us that the state courts ignored her federal constitutional contentions, that the opinions of those courts failed even to acknowledge that such contentions were being made. But under Kremer the judgment of the state courts is conclusive if those

courts' procedures satisfied due-process requirements. In the end, plaintiff's argument is simply that the state courts' opinions did not expressly rule on her federal constitutional arguments. We do not believe that the Due Process Clause of the Fourteenth Amendment requires any particular technique of opinion-writing. Courts frequently reject by implication arguments urged by parties. Courts' opinions typically address explicitly only those contentions they believe are substantial enough to warrant such treatment. The state courts' opinions' failure to mention plaintiff's federal constitutional arguments means only that those courts did not consider the arguments substantial. Whether this

was right or wrong is beside the point in the present posture of the case. The doctrines of claim and issue preclusion prevent relitigation of wrong decisions just as much as right ones. Otherwise, the doctrines would have no effect and be useless.

The District Court correctly determined that the judgments of the state courts against Suzanne Clark's property claim preclude her attempt to relitigate in this federal action constitutional contentions that she unsuccessfully raised before the state courts.

Affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,

EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 92-2327SIDM

Suzanne Clark,	*	
	*	
Appellant,	*	Order Denying Petition
	*	for Rehearing and Suggestion for Rehearing En Banc
vs.	*	
	*	
George H. Clark, etc.,	*	
	*	
et al.,	*	
	*	
Appellees.	*	

The suggestion for rehearing en banc is denied. The petition for rehearing is also denied.

March 25, 1993

Order Entered at the Direction of the Court: /s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit.